IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 248 of 2002

with

CIVIL APPLICATION No 3867 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HINDUSTAN PETROLEUM CORPO.LTD.

Versus

SHASHIKANTBHAI J PATEL

Appearance:

1. Appeal from Order No. 248 of 2002

MR GN SHAH for Appellant No.

MR AY KOGJE for Respondent No. 1-9

..... for Respondent No. 10

(MR DN PATEL) for Respondent No. 11

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/01/2005

ORAL JUDGEMENT

1. The appellant has filed this Appeal from Order against the order passed below exh.5 in Special Civil Suit No.58 of 2002 by the learned Civil Judge (S.D.), Anand dated 18/05/2002.

2. On 18/07/2002 this Court (Coram : Ravi R. Tripathi, J.) has passed the following order;

"Rule. Mr.Joshi waives service of rule.
Ad interim relief in terms of para 6(B).

2. The present Appeal from Order is filed against the order passed below exh.5 in Special Civil Suit No.58 of 2002 by the learned Civil Judge (S.D.), Anand dated 18/05/2002. The suit is filed by 9 persons against Hindustan Petroleum Corporation Ltd. and Govt. of India, New Delhi, joining M/s.Patel Gas Suppliers (H.P. Gas Distributors) as defendant no.2. It is prayed in exh.5 that the plaintiffs who are supplied gas refills by defendant no.2 (M/s. Patel Gas Suppliers) be continued and that the defendants must not stop the supply.

3. It is pointed out by the learned advocate Mr.Shah appearing for the appellant that the present appellant-defendant no.1 decided to transfer some of the consumers in the form of block transfer to the distributors, whose details are set out in Annexure `C', page 57. Mr.Shah submitted that reasons for transfer are also set out in the said letter. It is stated in that letter that currently customer holding of defendant no.2 for Petlad is approximately 9400 and refill sale per month on an average is 5175 refills for the year 2001-02. It is further stated that the same is about 65% of the prescribed ceiling limit of the market. Thus, M/s. Patel Gas Suppliers have already reached to the viable limit of 50% of the ceiling limit, and therefore, present appellant has decided to close the extension point of M/s.Patel Gas Suppliers at V.V. Nagar with immediate effect.

4. It is important to note that M/s. Patel Gas Suppliers aggrieved of this, approached the Court of learned Civil Judge (J.D.), Gandhinagar by filing suit No.91 of 2002 on 13/05/2002. Exh.5 application was also filed. However, the same is not taken up for hearing and it is stated by Mr.Pandya who is present on behalf of

M/s.Patel Gas Suppliers that the same is now fixed for hearing on 25/07/2002. Mr.Pandya also stated that they have also filed exh.12 application for quashing and / or stay of the aforesaid letter dated 10/05/2002, Annexure `C'. It is further stated by Mr.Pandya that the application could not be heard because the Corporation was taking time which was objected to by the plaintiffs. In the meantime, these 9 persons present opponents, plaintiffs in Special Civil Suit No.58 of 2002 filed present suit and exh.5 application before Anand Court and obtained an order whereby the present appellant restrained from effecting transfer. It is interesting that one of the plaintiffs herein has filed affidavit in support of M/s. Patel Gas Suppliers, the plaintiff of Regular Civil Suit No.91 of 2002. The contents of that affidavit are required to be taken note of which say that, "till date we have never suffered any hardship in the matter of supply of gas from M/s.Patel Gas Suppliers and that we have full satisfaction from M/s.Patel Gas Suppliers." The next sentence in the affidavit is that, "we are provided all types of facilities by M/s.Patel Gas Suppliers". The affidavit does not give details of facilities provided by a gas supplier. The affidavit without disclosing any reasons states that, "in place of M/s. Gas Suppliers, if we are supplied gas by any other dealer, we are apprehending that we will be put inconvenience and we are also having apprehension that we will not be getting gas supply in time and that the facilities which were provided by M/s. Patel Gas Suppliers, we will not be getting". This affidavit is sufficient to show that the present litigation is sponsored by M/s. Patel Gas Suppliers.

5. Mr.Joshi, learned advocate appearing for opponents no.1 to 9 submitted that now they have a registered association in the name of "H.P. Gas, Vallabh Vidyanagar Consumers' Association". It is registered on 05/06/2002 while the suit was filed on 18/05/2002. It is clear that it was only after filing of the suit, it was thought fit to form registered association.

6. The only ground on which the suit was filed by the opponents no.1 to 9, the original plaintiffs was that the consumers will suffer hardships, and therefore, it will be proper for

this Court to appreciate the difficulties and hardships enumerated by opponents no.1 to 9. They are produced as Annexure II to the affidavit dated 11/06/2002. For ready reference same are reproduced hereunder;

"1. They have to make a telephone call to the dealers at Anand.

2. The experience shows that such calls are hardly respondent since it is getting engage most of the time, which would make the customers to wait and try and try again.

3. Everybody does not have telephone connections and they have to go elsewhere to make telephone calls, if at all it is convenient.

4. In case of urgency and needs, one has to go to Anand personally to register his refill demand.

5. The agencies have already large numbers of customers already registered with them and, therefore, obviously the new persons would be treated as new consumers and would not be attended to and if at all the other dealers are honest to their services, they would plead hardships, difficulties and inconvenience, etc.

6. So far as the agencies at nos.1 and 2 of the Annexure `C' are concerned, they are dealers of I.O.C. which would require the customers who are assigned to them to file transfer applications, which would cause them to spend something on such applications and wait till such applications are decided and are finally disposed of.

7. The distance between Vallabh Vidyanagar and Anand is about 6.00 KMs and every one does not have his own vehicle to rush to that place. The time factor for approaching such dealer is also to be considered because one has to specially go to Anand for the purpose and

that the time has to be spared at the cost of one's working hours, etc."

7. Taking into consideration the difficulties one by one, the same are found without any substance.

8. All these difficulties taken together pertain to booking of refills. A fact may be noted that these are the days of competition and scenario has changed. Earlier, gas refills were supplied only by one agency and there used to be a short supply. These difficulties were the matter of experience of day to day of every one. Now that there is more than one competitors in the market. In Anand itself, there are five distributors. One distributor is available at V.V. Nagar. The difficulties which are enumerated by present opponents no.1 to 9 are more of imaginary nature. The Court finds no substance in any of these difficulties.

9. Mr.Joshi, learned advocate prayed for stay of this order for two weeks. As the Court is not convinced about any of the difficulties of opponents no.1 to 9 and in view of the fact that the Court is of the opinion that opponents no.1 to 9 original plaintiffs have filed sponsored litigation, more so when M/s.Patel Gas Suppliers, the defendant no.2, who is directly affected, has filed a suit at Gandhinagar Court, wherein no orders are passed so far, the present proceedings are in the nature of second innings, the Court finds no substance in the request of Mr.Joshi. Hence rejected."

3. Heard Mr.G N Shah learned advocate for the appellant. None present for the respondents. In view of the facts and circumstances of the case, it would be appropriate to direct the parties to abide by the directions issued by this Court in the aforesaid order till the said suit is finally disposed of.

4. Hence, the parties are directed to abide by the directions issued by this Court in the aforesaid order till the said suit is finally disposed of. The appeal from order stands disposed of in terms of the order referred to hereinabove.

CIVIL APPLICATION No 3867 of 2002

In view of the order passed in the appeal from order no orders are necessary in this Civil Application. Hence, it stands disposed of. Rule is made absolute accordingly.

(K. S. Jhaveri, J.)

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